In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 869

F. J. BUCKNER CORPORATION, d/b/a
UNITED ENGINEERING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 15-23) is reported at 401 F.2d 910. The Board's decision and order (Pet. App. 1-14) are reported at 163 NLRB No. 7.

JURISDICTION

The judgment of the court of appeals was entered on November 4, 1968 (Pet. App. 24-26). The petition

for a writ of certiorari was filed on December 23, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at pages 3-4 of the petition.

QUESTION PRESENTED

Whether the Board properly admitted in evidence the affidavit of the company's president, which was given to a Board agent in the course of his investigation of an unfair labor practice charge against the company, despite the objection that it was obtained through the agent's allegedly false and misleading statements and without any warning that the president could remain silent and might have the assistance of counsel.

STATEMENT

The court below sustained (Pet. App. 15-23) the Board's finding (Pet. App. 1-2, 10-11), unchallenged here, that the F. J. Buckner Corporation had discharged its employee, Szczesniak, because of his role in handling and processing employee grievances, in violation of Section 8(a)(3) and (1) of the Act, 29 U.S.C. 158(a)(3) and (1). Accordingly, it enforced the Board's order, which, *inter alia*, requires the Company to reinstate Szczesniak with back pay (Pet. App. 12). The only issue raised by the petition is

whether an affidavit by the Company's president, which was admitted in evidence at the hearing and was relied on by the Board in establishing the motivation for Szczesniak's discharge, was obtained under improper circumstances.

While investigating the unfair labor practice charge respecting Szczesniak's discharge, Field Attorney William F. Spannier III, an agent from the Board's Regional Office, obtained a written, sworn statement from F. J. Buckner, the Company's president (G.C. Exh. 4). Buckner was interviewed in his office (Tr. 44). Spannier told Buckner that he "wanted the reasons we had for discharging Mr. Szczesniak," and added that "he was merely getting information so that when they [the Regional Office] referred this to Washington that there wouldn't be a kickback on the Local Board and that they would have sufficient grounds to deny the complaint" (Tr. 46). Spannier also told Buckner that he had "talked to the Union and had talked to the stewards and, as far as he was concerned, there was no * * * legitimate reason for filing an unfair labor practice charge" (Tr. 47). Buckner then related the reasons for having discharged Szczesniak, which included his role in filing grievances (Tr. 40, 49, G.C. Exh. 4). Spannier wrote out the statement in longhand but Buckner asked him to submit it in typewritten form (Tr. 45). When Spannier did so, Buckner signed it *(ibid.)*. Buckner admitted that he read the affidavit before signing it, and that it was true (Tr. 40-41). The Board rejected petitioner's contention that the affidavit should not have been admitted in evidence under *Escobedo* v. *Illi-*

nois, 378 U.S. 478 (Pet. App. 1, n. 1),[1] and the court of appeals agreed (Pet. App. 20-22).

ARGUMENT

The petition is premised on an equivalence between Board proceedings and the criminal cases to which the Fifth Amendment applies. No such equivalence exists. In *National Labor Relations Board* v. *Adhesive Products Corp.*, 258 F.2d 403 (C.A. 2), the court did not indicate that Board proceedings are "quasi-criminal" in any respect; rather, it found (pp. 407-408) no "significant distinction between civil and criminal proceedings" for the purpose of a rule requiring production for impeachment use of a statement given by a witness to the government. The petition does not suggest any criminal charge to which Company President Buckner might have been exposing himself by his statement; indeed, the Board's unfair labor practice remedy was directed to the Company and not to him as an individual, so that self-incrimination could not be in issue even by petitioner's tenuous anology. Cf. *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U.S. 7, 9-11.

In any event, the Board agent merely told the Company's president his personal view of the merits of the charge, and at no time offered to dismiss it as a

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[1] The Board followed its earlier decision in *Crown Imports Co.*, 163 NLRB No. 4, where it held that the rules applicable to custodial interrogation in a criminal proceeding were not applicable to the dissimilar circumstances of a Board investigation.

quid pro quo for a statement. There was no "promise of immunity or leniency in return for a statement." *Shotwell Mfg. Co.* v. *United States*, 371 U.S. 341, 348. Nor is any untruth or misrepresentation shown to have been uttered. Moreover, Buckner was not in custody, and Board investigations, unlike tax investigations, are not the sort which "frequently lead to criminal prosecutions." *Mathis* v. *United States*, 391 U.S. 1, 4. The court below properly concluded that there would be no warrant for applying the principle of *Miranda* v. *Arizona*, 384 U.S. 436, "to situations where there is no criminal charge under investigation and where a statement is given by a person who has been in no way deprived of his freedom" (Pet. App. 22).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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